

FTC Commercial Surveillance and Data Security Forum Highlights Industry and Consumer Perspectives

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Hunton Andrews Kurth's Privacy and Cybersecurity

On September 8, 2022, the Federal Trade Commission hosted a [virtual public forum](#) on its Advanced Notice of Proposed Rulemaking ("ANPR") concerning "commercial surveillance and lax data security." The forum featured remarks from FTC Chair Lina Kahn, Commissioner Rebecca Kelly Slaughter and Commissioner Alvaro Bedoya, as well as panels with industry leaders and consumer advocates.

Remarks from Chair Khan and Commissioners Slaughter and Bedoya focused on the need for public participation in the rulemaking process and the FTC's role in privacy regulation in the absence of comprehensive federal legislation. Commissioner Slaughter noted that, until such federal legislation is passed, the FTC will continue to use its Section 5 authority to regulate unfair and deceptive practices related to privacy and data security.

The industry panel was moderated by FTC Senior Advisor Olivier Sylvain and focused in part on how the FTC should structure a potential rule. Multiple industry panelists emphasized the need for rules that limit out-of-context data use or tracking, while still allowing in-context use to as consumers expect. Industry panelists also highlighted the need for heightened rules for "dominant" industry players and financial penalties for bad behaviors.

The consumer advocate panel focused on issues surrounding meaningful consumer consent and the negative effects of commercial surveillance on consumers, such as one-click background checks and demographic-tailored advertising that disproportionately affects minority groups in negative ways. Similar to the industry panel, consumer advocate panelists also highlighted out-of-context data use and dominant industry actors as some of the major issues the FTC should address in its rulemaking. The FTC will receive public comments on the ANPR until October 21, 2022.

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National Law Review, Volume XII, Number 256

Source URL: <https://natlawreview.com/article/ftc-commercial-surveillance-and-data-security-forum-highlights-industry-and-consumer>

